

COURT OF CRIMINAL APPEALS NO. CR-04-0117

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF LEE COUNTY, ALABAMACIRCUIT COURT NO. CC 2003 323.60 & CC 2003 325.60CIRCUIT JUDGE HON JACOB A WALKER IIIType of Conviction / Order Appealed From: RULE 32 PETITIONSentence Imposed: PETITION DISMISSED ON 9/2/04Defendant Indigent: ☒ YES ☐ NOROBERT WAYNE CLEMENTS

AIS#145598

NAME OF APPELLANT

PRO-SE
(Appellant's Attorney)

(Telephone No.)

200 WALLACE DRIVE
(Address)CLIO AL 36017-2615
(City) (State) (Zip Code)

(Zip Code)

V.

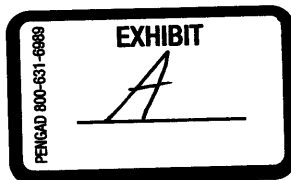
STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



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CASE ACTION SUMMARY
CONTINUATIONCASE: CC 2003 000323.60
JUDGE ID: JAW

STATE OF ALABAMA VS CLEMENTS ROBERT WAYNE

DATE ACTION, JUDGMENTS, CASE NOTES

10/13/04 Motion For Reconsideration

10/18/04 Notice of Appeal

10/18/04 Motion and Affidavit in Support of Motion
For Leave To Appeal in forma pauperis

10/18/04 Docketing Statement/Reporter's Transcript Order

10/22/04 Notice of Appeal to Court of Criminal Appeals

Uniform Judicial System

Form C-7 REV 2/79

ACTION SUMMARY

CONTINUATION

CC 03 323
ID YEAR NUMBER

Style: State v. Robert Wayne Clements

Page Number _____ of _____ Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

8/12/03

On this day, the Defendant, appeared along with the attorney (appointed/retained) and with the consent and approval of said attorney, the Defendant withdrew the plea of not guilty and entered a plea of guilty (offense below). Before accepting Defendant's plea of guilty, the Court advised the Defendant of all his/her constitutional rights, to include appellate rights, and questions and answers were taken down by the Court Reporter. The Defendant insisted on pleading guilty. The Court then permitted the Defendant to withdraw the plea of not guilty and enter a plea of guilty. The Court inquired of the Defendant in reference to anything to be said on why judgment and sentence should not now be pronounced and Defendant said nothing. On the plea of guilty thereto, it is ORDERED and ADJUDGED by the Court that the Defendant is guilty and as punishment, the Defendant is hereby formally sentenced to the following:

OFFENSE: Conspiracy to Commit Robbery☒ Charged in Indictment ☐ Included☐ Charged in Complaint ☐ Included☒ Felony ☐ Misdemeanor☐ Youthful Offender

Underlying Charge

☒ Within the Habitual Offender Limits☒ Under the Habitual Offender ActTERM of: 23 ☐ Months County Jail/City Auburn, Opelika☐ Days in County Jail -
City Auburn, Opelika☒ Years, Penitentiary of the State of AlabamaFINE: 0ATTORNEY FEES: 500.00DRUG FINE: 0 FORENSIC SCIENCES FUND: 0 COURT COSTS: yesRESTITUTION: 0 TO: _____VICTIM COMPENSATION FUND ASSESSMENT: 75.00 JAIL CREDIT: 181 DAYS

COSTS, RESTITUTION, AND FINE TO BE PAID BY: _____

DRIVER'S LICENSE SUSPENDED/REVOKED FOR: N/ANOL PROS CASES WITH/WITHOUT COSTS: CC03-324, 326☐ APPLICATION FOR PROBATION

PROBATION HEARING DATE: _____

☒ WAIVED APPLICATION FOR PROBATION - Not Eligible☒ SENTENCE PLACED IN EFFECT☐ SENTENCE SUSPENDED, CONTINUED ON PRESENT BOND☐ COMMUNITY SERVICE OF _____ HOURS TO BE PERFORMED WITH LEE COUNTY SOLID WASTE, Jack Marshall;

Completed by: _____

REVIEW HEARING DATE: _____

ATTORNEY: Lauryn Lauderdale☒ APPOINTED☐ RETAINED

FILED IN OFFICE AUG 15 2003

603

PRISON TRANSCRIPT ISSUED

VOL

004

Jacob A. Walker, III, Circuit Court Judge

[illegible]

RO372 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2003 000323.00
 ER: LEW CASE ACTION SUMMARY
 GE: 1 CIRCUIT CRIMINAL RUN DATE: 04/15/2003
 =====
 IN THE CIRCUIT COURT OF LEE JUDGE: JAW

STATE OF ALABAMA VS CLEMENTS ROBERT WAYNE
 110 LEE ROAD
 CASE: CC 2003 000323.00 OPELIKA, AL 36801 0000

DOB: 01/17/1966 SEX: M RACE: U HT: 0 00 WT: 000 HR: EYES:
 SSN: 943000024 ALIAS NAMES:

CHARGE01: CONSPIRACY - ROBBERY CODE01: ROBIC LIT: CONSPIRACY - RD TYP: F #: 001
 OFFENSE DATE: AGENCY/OFFICER: 0430000 MCMENAM

DATE WAR/CAP ISS: DATE ARRESTED:
 DATE INDICTED: 04/11/2003 DATE FILED: 04/15/2003
 DATE RELEASED: 1200,000.00 DATE HEARING:
 BOND AMOUNT: 2500,000.00 SURETIES:

DATE 1: 04/24/2003 DESC: ARRG TIME: 0900 A
 DATE 2: 05/19/2003 DESC: JTRL TIME: 0930 A

BOOKING NOS: GJ 2003 000024 00 / DC 2003 000258 00 /

DEF/ATY: LAUDERDALE LAURYN AKENS TYPE: A TYPE:
 GULLAGE & TICKAL LLT
 2304-A GATEWAY DRIVE
 OPELIKA AL 36801 00000

PROSECUTOR: ABBETT NICK

CH CSE: GJ200300002400 CHK/TICKET NO: GRAND JURY: 67
 URT REPORTER: SID NO: 000000000
 F STATUS: JAIL DEMAND: OPER: LEW

NOTE: 4-15-03 DISCOVERY ORDER

DATE ACTIONS, JUDGEMENTS, AND NOTES

04/17/03	NOTICE OF ARRAIGNMENT TO DEFENDANT AND SURETIES/
4-18-03	WRIT ISSUED - executed 4-22-03
4/18/03	Motion to Reduce bond
4-18-03	REQUEST FOR DISCOVERY
4-22-03	WRITTEN PLEA OF NOT GUILTY AND WAIVER OF ARRAIGNMENT FILED BY
4-24-03	Written plea of not guilty and waiver of arraignment filed. The defendant is granted (5) days to file motions for special pleas. This case is set for docket call on May 1, 2003, at 9:00 A.M. This case is set for docket call on May 19, 2003, at 8:30 A.M.
	FILED IN OFFICE APR 25 2003
MAY 02 2003	STATE'S MOTION FOR DISCOVERY

CASE ACTION SUMMARY
CONTINUATIONCASE: CC 2003 000325.60
JUDGE ID: JAW

STATE OF ALABAMA

VS

CLEMENTS ROBERT WAYNE

DATE

ACTION, JUDGMENTS, CASE NOTES

10/13/04

Motion for Reconsideration

10/18/04

Notice of Appeal

10/18/04

Motion and Affidavit in Support of Motion For Leave

10/18/04

To Appeal in Forma Pauperis

Docketing Statement/Reporter's Transcript Order

10/22/04

Notice of Appeal to Court of Criminal Appeal

ACROB72 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2003 000325.60
OPER: KAH CASE ACTION SUMMARY
PAGE: 1 CIRCUIT CRIMINAL RUN DATE: 07/15/2004
IN THE CIRCUIT COURT OF LEE JUDGE: JAW

STATE OF ALABAMA VS CLEMENTS ROBERT WAYNE
CASE: CC 2003 000325.60 AIS#145598
200 WALLACE DRIVE
CLIO, AL 36017 0000

DOB: 01/19/1966 SEX: M RACE: U HT: 0 00 WT: 000 HR: EYES:
SSN: 943000033 ALIAS NAMES:
CHARGED01: RULE 32-FELONY CODE01: RULE LIT: FIREARM-POSS/S TYP: F #: 001
OFFENSE DATE: AGENCY/OFFICER: 0430000 MCMENAM

DATE VAR/CAP ISS: DATE ARRESTED: 07/13/2004
DATE INDICTED: 04/11/2003 DATE FILED: 04/15/2003
DATE RELEASED: DATE HEARING:
BOND AMOUNT: \$0.00 SURETIES:

DATE 1: DESC: TIME: 0000
DATE 2: DESC: TIME: 0000

TRACKING NOS: GJ 2003 000033 00 / DC 2003 000257 00 /

DEF/ATY: PRO SE

TYPE: S

TYPE:

00000

00000

PROSECUTOR: ABBETT NICK

OTH CSE: GJ200300003300 CHK/TICKET NO: GRAND JURY:
COURT REPORTER: SID NO: 000000000
REF STATUS: PRISON DEMAND: OPER: KAH

TE: 7/13/04 PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

DATE ACTIONS, JUDGEMENTS, AND NOTES

7/13/04	Motion and Affidavit in Support of Motion for Leave to Proceed in forma pauperis
7/13/04	In forma pauperis Declaration
7/13/04	Petition for Relief from Convictions or Sentence
7/13/04	Motion to Dismiss Petitioner's Evidence
7/13/04	Motion to Appoint Counsel
8/12/04	Order Attorneys Response and Motion for Summary Dismissal of Defendants Rule 3 Petition
	FILED IN OFFICE SEP 01 2004
9-14-04	Motion for Enlargement of Time

Style: State v. Robert Wayne Clements

Page Number _____ of _____ Pages

ACTIONS, JUDGMENTS, CASE NOTES

8/13/03

On this day, the Defendant, appeared along with the attorney (appointed/retained) and with the consent and approval of said attorney, the Defendant withdrew the plea of not guilty and entered a plea of guilty (offense below). Before accepting Defendant's plea of guilty, the Court advised the Defendant of all his/her constitutional rights, to include appellate rights, and questions and answers were taken down by the Court Reporter. The Defendant insisted on pleading guilty. The Court then permitted the Defendant to withdraw the plea of not guilty and enter a plea of guilty. The Court inquired of the Defendant in reference to anything to be said on why judgment and sentence should not now be pronounced and Defendant said nothing. On the plea of guilty thereto, it is ORDERED and ADJUDGED by the Court that the Defendant is guilty and as punishment, the Defendant is hereby formally sentenced to the following:

OFFENSE: Possession of Short Barrelled Shot Gun ☒ Charged in Indictment ☐ Included

☒ Felony ☐ Misdemeanor ☐ Youthful Offender ☐ Charged in Complaint ☐ Included

☒ Within the Habitual Offender Limits ☒ Under the Habitual Offender Act

TERM of: 10 ☐ Months County Jail/City Auburn, Opelika ☐ Days in County Jail - City Auburn, Opelika
☒ Years, Penitentiary of the State of Alabama

FINE: 0 ATTORNEY FEES: 0

DRUG FINE: 0 FORENSIC SCIENCES FUND: 0 COURT COSTS: yes

RESTITUTION: 0 TO: _____

VICTIM COMPENSATION FUND ASSESSMENT: 75.00 JAIL CREDIT: 181 DAYS

COSTS, RESTITUTION, AND FINE TO BE PAID BY: _____

DRIVER'S LICENSE SUSPENDED/REVOKED FOR: N/A

NOL PROS CASES WITH/WITHOUT COSTS: CC 03-324, 326

☐ APPLICATION FOR PROBATION PROBATION HEARING DATE: _____

☒ WAIVED APPLICATION FOR PROBATION

☒ SENTENCE PLACED IN EFFECT ☐ SENTENCE SUSPENDED, CONTINUED ON PRESENT BOND

☐ COMMUNITY SERVICE OF _____ HOURS TO BE PERFORMED WITH LEE COUNTY SOLID WASTE, Jack Marshall

Completed by: _____

REVIEW HEARING DATE: _____

ATTORNEY: Lauryn Lauderdale ☒ APPOINTED ☐ RETAINED

Concurrent w/ CC03-323

FILED IN OFFICE AUG 15 2003

PRISON TRANSCRIPT ISSUED

I VOL 064 PAGE 76

Jacob A. Walker, III
Jacob A. Walker, III, Circuit Court Judge

CR0372 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2003 000325.00
 OPER: LEW CASE ACTION SUMMARY
 PAGE: 1 CIRCUIT CRIMINAL RUN DATE: 04/15/2003
 IN THE CIRCUIT COURT OF LEE JUDGE: JAW

STATE OF ALABAMA
 CASE: CC 2003 000325.00

VS CLEMENTS ROBERT WAYNE
 110 LEE RD 445
 OPELIKA, AL 36801 0000

DOB: 01/19/1966 SEX: M RACE: U HT: 0 00 WT: 000 HR: EYES:
 SN: 943000033 ALIAS NAMES:
 CHARGED1: FIREARM-POSS/SALE SH CODE01: PSAW LIT: FIREARM-POSS/S TYP: F #: 001
 OFFENSE DATE: AGENCY/OFFICER: 0430000 MCMENAM

ATE WAR/CAP ISS: DATE ARRESTED: 01/13/2003
 ATE INDICTED: 04/11/2003 DATE FILED: 04/15/2003
 ATE RELEASED: DATE HEARING:
 BOND AMOUNT: \$0.00 SURETIES:

ATE 1: 04/24/2003 DESC: ARRG TIME: 0900 A
 ATE 2: 05/19/2003 DESC: JTRL TIME: 0830 A

RACKING NOS: GJ 2003 000033 00 / DC 2003 000259 00 /

DEF/ATY: LAUDERDALE LAURYN AKENS TYPE: A TYPE:
 GULLAGE & TICKAL LLT
 2304-A GATEWAY DRIVE
 OPELIKA AL 36801 00000

PROSECUTOR: ABBETT NICK

TH CSE: GJ200300003300 CHK/TICKET NO: GRAND JURY:
 DURT REPORTER: SID NO: 0000000000
 EF STATUS: JAIL DEMAND: OPER: LEW

4-15-03 DISCOVERY ORDER

A.E. ACTIONS, JUDGEMENTS, AND NOTES

04/17/03

NOTICE OF ARRAIGNMENT TO
 DEFENDANT AND SURETIES

4/18/03

Motion to Reduce Bond

4-18-03

REQUEST FOR DISCOVERY

4-23-03

WRITTEN PLEA OF NOT GUILTY AND
 WAIVER OF ARRAIGNMENT FILED BY

4/24/03

Written plea of not guilty and waiver of arraignment filed.

The defendant is granted (5) days to file motions for
 special pleas. This case is set for docket call on

May 9, 2003, at 9:00 A.M. This case is
 set for docket call on May 19, 2003, at
 8:30 A.M.

FILED IN OFFICE APR 25 2003

MAY 02 2003

STATE'S MOTION FOR DISCOVERY

16-03

This case is continued to next term of court for lab.

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FILED IN OFFICE MAY 16 2003

Case Number

ID YR NUMBER
(To be completed
by Court Clerk)

IN FORMA PAUPERIS DECLARATION

(Insert appropriate court)

Robert Wayne Clement, Pro-Se
(Petitioner)

vs.

State of Ala
(Respondent(s))

FILED
JUL 13 2004

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

DECLARATION IN SUPPORT OF REQUEST TO PROCEED
IN FORMA PAUPERIS

I, Robert Wayne Clement, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes _____ No XXX

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

N/A incarcerated

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

-2002 - Approximately 12000 per month

I worked for, Self Employed Contractor with Julia Tatum Hunter

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes _____ No XX

b. Rent payments, interest, or dividends?

Yes _____ No XX

c. Pensions, annuities, or life insurance payments?

Yes _____ No XX

d. Gifts or inheritances?

Yes _____ No XX

e. Any other sources?

Yes _____ No XX

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

N/A - None

3. Do you own cash, or do you have money in a checking or savings account?

Yes XX

No

(include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

No money in checking or savings account, I have funds in a prison account see Certificate Below and attached

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes

No XX

If the answer is "yes", describe the property and state its approximate value.

N/A - None

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

Currently incarcerated cannot contribute any support at this time. When in society I contributed approx \$600/- month to wife (2) kids

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 7-1-04
(Date)

Robert W. Clements
Signature of Petitioner

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 0.10 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said Easterling institution:

See attached

7-6-04

DATE

Lynna K. Peters Acct Clerk
AUTHORIZED OFFICER OF INSTITUTION

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
EASTERING CORR. FACILITY

ADD. #: 145590 NAME: CLEMENTS, ROBERT WAYNE AS OF: 07/06/2004

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSIT
JUL	25	\$0.00	\$0.00
AUG	31	\$0.00	\$0.00
SEP	30	\$0.00	\$0.00
OCT	31	\$2.24	\$87.63
NOV	30	\$1.67	\$25.00
DEC	31	\$0.43	\$0.00
JAN	31	\$4.64	\$46.50
FEB	28	\$4.97	\$4.00
MAR	31	\$5.59	\$75.00
APR	30	\$5.35	\$100.00
MAY	31	\$20.68	\$60.00
JUN	30	\$0.10	\$0.00
JUL	0	\$0.10	\$0.00

IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

CASE NUMBER: _____
ASSIGNED BY CLERK

ROBERT WAYNE CLEMENTS,
PETITIONER,

-VS-

STATE OF ALABAMA,
RESPONDENT.

IN RE: CASE NUMBERS: CC-03-323 AND CC-03-325; LEE
COUNTY CIRCUIT COURT

RULE # 32 POST-CONVICTION PETITION,
BRIEF AND ARGUMENT

PREPARED BY:

ROBERT WAYNE CLEMENTS,
PETITIONER, PRO-SE.

FILED
JUL 13 2004

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

ADDRESS OF PETITIONER:

ROBERT WAYNE CLEMENTS, PRO-SE
ECF * #145598 * DORM - 9/A-22
200 - WALLACE DRIVE
CLIO, ALABAMA
36017-2615

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IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

CASE NUMBER: _____
ASSIGNED BY CLERK

CERTIFICATE OF INTERESTED PARTIES

IN RE: ROBERT WAYNE CLEMENTS,
PETITIONER,

-vs-

STATE OF ALABAMA,
RESPONDENT.

IN RE: CASE NUMBERS: CC-03-323 & 325

- 1). The Honorable Judge JACOB A. WALKER, III;
- 2). The Honorable NICK ABBETT DISTRICT ATTORNEY
OF LEE COUNTY, ALABAMA, RESPONDENT;
- 3). ROBERT WAYNE CLEMENTS, PETITIONER, PRO-SE.

IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

ROBERT WAYNE CLEMENTS,
PETITIONER,

-VS-

STATE OF ALABAMA,
RESPONDENT.*
*
* CASE NUMBER: _____
* ASSIGNED BY CLERK
*
* IN RE: CASE NO.'S: CC-03-323 &
* 326MOTION AND AFFIDAVIT IN SUPPORT OF MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes, the Petitioner and moves the Court for an "Order" granting leave to proceed in forma-pauperis and in support of said "Motion" makes the following Affidavit, to-wit;

A F F I D A V I TSTATE OF ALABAMA]
COUNTY OF BARBOUR]FILED
JUL 13 2004
IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

I, ROBERT WAYNE CLEMENTS, being first duly sworn, depose and sayeth that I am the Petitioner in the above entitled and numbered cases; that in support of my "A.R.Cr.P., Rule # 32 Post-Conviction Petition without being required to pre-pay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security therefor; that I believe I entitled to redress.

I further state that the foregoing information that I provide to this Honorable Court relating to my ability to pay the cost of prosecuting my A.R.Cr.P., Rule # 32 Post-Conviction Petition are true and correct to the best of my knowledge and belief under penalty of perjury.

1). I am not presently employed, nor, have I been gainfully employed for several months prior to the filing of this instant Motion and Affidavit.

2). The date of my last employment was: 2002

AFFIDAVIT OF PETITIONER CLEMENTS
CONTINUED FROM PAGE # 1:

and the amount of salary that I received was: \$ 2,000 / month
 _____, and the address of my last employer
 was: Self-Employed.

3). I do not own any cash, checking or savings account.

4). I do not own any real estate, stocks, bonds, notes,
 automobiles, or other valuable property, (excluding or-
 dinary household furnishings and clothing).

5). When I was gainfully employed I helped support my
 family, but, at the present time, because of my poverty
 I cannot contribute any support to my family.

I understand that a false statement in this instant aff-
 davit will subject me to penalties of perjury.

Executed this the 8 day of July, 2004.

X Robert Wayne Clements
 ROBERT WAYNE CLEMENTS - AFFIANT

- N O T A R Y S T A T E M E N T -

STATE OF ALABAMA]

COUNTY OF BARBOUR]

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 8th DAY
 OF July, 2004.

My Commission Expires March 19, 2007
 NOTARY PUBLIC

MY COMMISSION EXPIRES

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32,
Alabama Rules of Criminal Procedure)

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK
Case Number

JUL 13 2004

IN THE _____ CIRCUIT COURT OF _____ ALABAMA
ID YR NUMBER
LEE COUNTY, ALABAMA

ROBERT WAYNE CLEMENTS vs. STATE OF ALABAMA
Petitioner (Full Name) Respondent

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number #145598 Place of Confinement EASTERLING CORR. FACILITY

County of conviction LEE COUNTY

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.

- Name and location (city and county) of court which entered the judgment of conviction
or sentence under attack CITY OF OPELIKA, COUNTY OF LEE, ALABAMA
- Date of judgment of conviction AUGUST 11, 2003
- Length of sentence [23] YEARS TO RUN CONCURRENT WITH [10] YEARS
- Nature of offense involved (all counts) CONSPIRACY TO COMMIT ROBBERY, AND,
POSSESSION OF A SHORT-BARRELED SHOTGUN
- What was your plea? (Check one)
 - Guilty ☒
 - Not guilty ☐
 - Not guilty by reason of mental disease or defect ☐
 - Not guilty and not guilty by reason of mental disease or defect ☐

6. Kind of trial: (Check one)

(a) Jury _____

(b) Judge only XXX

7. Did you testify at the trial?

Yes N/A

No N/A

8. Did you appeal from the judgment of conviction?

Yes _____

No XXX

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court N/A - NO APPEAL

(2) Result N/A

(3) Date of result N/A

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court N/A - NONE

(2) Result N/A

(3) Date of result N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, ~~or~~ motions with respect to this judgment ~~in~~ any court, state or federal?

Yes _____ No XXX

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court N/A - NONE

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes N/A

No N/A

(5) Result N/A

(6) Date of result N/A

- (b) As to any second petition, application, or motion, give the same information:

(1) Name of court N/A - NONE

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes N/A

No N/A

(5) Result N/A

(6) Date of result N/A

- (c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court N/A - NONE

(2) Nature of proceeding N/A(3) Grounds raised N/A

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes N/ANo N/A(5) Result N/A(6) Date of result N/A

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes N/A No N/A(2) Second petition, etc. Yes N/A No N/A(2) Third petition, etc. Yes N/A No N/AATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

I WAS NOT ADVISED BY THE COURT OR MY TRIAL ATTORNEY THAT I
HAD A RIGHT TO APPEAL MY CONVICTION AND SENTENCE. HENCE: I
DID NOT APPEAL.

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUND S OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

XXX A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

XXX (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

XXX (2) Conviction obtained by use of coerced confession.

XXX (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

XXX (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

XXX (5) Conviction obtained by a violation of the privilege against self-incrimination.

XXX (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(7) Conviction obtained by a violation of the protection against double jeopardy.

(8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

XXX (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

XXX B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

XXX E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court. Because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

XXX The facts do not merely amount to impeachment evidence; and

XXX If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

XXX The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

XXX F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____ No NO

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court N/A - NONE

(b) Result N/A

(c) Date of result N/A
(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No XX

15. Give the name and address, known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

(a) At preliminary hearing MS. LAURYN AKENS LAUDERDALE; ATTORNEY-AT-LAW
2304 - A GATEWAY DRIVE; OPELIKA, AL. 36801

(b) At arraignment and plea MS. LAURYN AKENS LAUDERDALE; ATTORNEY-AT-LAW
2304 - A GATEWAY DRIVE; OPELIKA, AL. 36801

(c) At trial MS. LAURYN AKENS LAUDERDALE; ATTORNEY-AT-LAW
2304 - A GATEWAY DRIVE; OPELIKA, AL. 36801

(d) At sentencing MS. LAURYN AKENS LAUDERDALE; ATTORNEY-AT-LAW
2304 - A GATEWAY DRIVE; OPELIKA, AL. 36801

(e) On appeal N/A - NO APPEAL

(f) In any post-conviction proceeding N/A THIS IS PETITIONER'S FIRST POST-CONVICTION PETITION WHICH BEING FILED PRO-SE

(g) On appeal from adverse ruling in a post-conviction proceeding N/A NONE AS YET

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes XX No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No XX

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes N/A No N/A

18. What date is this petition being mailed?

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on X 8th July 2004
(Date)

X *Robert Clements*
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 8th day of July, 2004
Robert Clements
Notary Public

OR *

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on _____
(Date)

Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 19 _____.

Notary Public

Name and address of attorney representing petitioner
in this proceeding (if any)

ROBERT WAYNE CLEMENTS, PRO-SE

ECF * #145590 * DORM - 9/A-

200 - WALLACE DRIVE

CLIO, ALABAMA 36017-2615

* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

32

ROBERT WAYNE CLEMENTS,

PETITIONER,

-vs-

STATE OF ALABAMA,

*

*

*

*

*

*

*

FILED

JUL 13 2004

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

CASE NUMBER: _____

ASSIGNED BY CLERK

IN RE: CASE NO.'S: CC-03-323&
326

PETITION FOR RELIEF OF CONVICTION AND SENTENCE PURSUANT
TO: ALABAMA RULES OF CRIMINAL PROCEDURE RULE #32, ET. SEQ..

Comes now your Petitioner, Pro-Se, with inmate paralegal assistance in the above named and styled case and action and hereby moves this Honorable Court to entertain and grant this instant Petition for the causes following, to wit;

I.

JURISDICTION

Your Petitioner hereby files this instant Petition pursuant to: Alabama Rules of Criminal Procedure, Rule # 32, et. seq., and hereby invokes said Rule as jurisdiction for this Honorable Court to entertain and grant this instant Petitioner.

II.

STATEMENT OF THE CASE

(1).

On or about, 01-11-03, your Petitioner was arrested for the following alleged offenses:

- 1). Attempted Burglary in the First Degree, and;
- 2). Possession of Short Barrel Shotgun, and;
- 3). Possession of Burglary Tools, and;
- 4). Conspiracy to Commit Robbery.

(4).

Your Petitioner prays that this Court make a transcript of all proceedings concerning this instant case at bar if this Court does not grant your Petitioner's Rule # 32 Petition so that there shall be an accurate for eventual appeal.

(5).

Your Petitioner prays that your Petitioner will be transported to all phases and hearings concerning your Petitioner's Rule # 32 Petition.

(6).

Your Petitioner finally prays for any further relief that this the Court deems just, proper, and, necessary.

Executed this the 8 day of July 2004.

Respectfully Submitted,

x Robert Clements

ROBERT W. CLEMENTS,
PETITIONER, PRO-SE

IN THE CIRCUIT COURT FOR LEE COUNTY, ALABAMA

ROBERT WAYNE CLEMENTS,

PETITIONER,

-VS-

STATE OF ALABAMA,

RESPONDENT.

*

* CASE NUMBER:

ASSIGNED BY CLERK

*

* IN RE: CASE NO.'S: CC-03-323 &
325

* LEE COUNTY CIRCUIT COURT

PETITIONER'S BRIEF AND ARGUMENT IN SUPPORT OF
PETITIONER'S A.R.Cr.P. RULE # 32 PETITION

Comes now, your Petitioner, Pro-se, herein and above named in the above styled and numbered cause, with inmate para-legal assistance and hereby presents the following issues and arguments in support of your Petitioner's A.R.Cr.P., Rule # 32 Post-Conviction Petition:

ISSUE # 1:

THE CONSTITUTION OF THE UNITED STATES OR OF THE STATE OF ALABAMA REQUIRES A NEW TRIAL, A NEW SENTENCE PROCEEDING, OR OTHER RELIEF PRAYED FOR IN THIS INSTANT POST-CONVICTION PETITION.

ARGUMENT:

Your Petitioner shows to this Honorable Court that your Petitioner's Conviction and Sentence is in direct violation of the Fifth (5th) Amendment to the United States Constitution, in the Your Petitioner has a liberty protected interest to due process of law as provided by the sixth (6th) Amendment to the United States Constitution, and, the Alabama Constitution, 1901, Art. I, §(6), and further pursuant to the fourteenth (14th) Amendment to the United States Constitution made obligatory upon the states pursuant to the fifth (5th) Amendment to the United States Constitution.

And in support of this instant "Issue" your Petitioner hereby PRESENTS THE FOLLOWING, TO WIT:

ISSUE # 2:

PETITIONER'S CONVICTION OBTAINED BY A PLEA OF GUILTY WHICH WAS UNLAWFULLY INDUCED OR NOT MADE VOLUNTARILY WITH THE UNDERSTANDING OF THE NATURE OF THE CHARGE AND THE CONSEQUENCES OF THE OF THE PLEA.

ARGUMENT:

Your Petitioner shows to this Court that he was originally indicted for the following offenses:

- 1). Possession of a Short Barrel Shotgun, and;
- 2). Attempted Burglary in the First Degree, and;
- 3). Possession of Burglary Tools, and;
- 4). Conspiracy to Commit Robbery.

Your Petitioner shows to this Court that he was not advised by the Court of exactly what the minimum and maximum range of punishments for the above referenced "offenses", hence; your Petitioner did not have, nor, was your Petitioner properly notified as to what the minimum and maximum ranges of sentencing that your Petitioner would expect to receive from said offenses.

If the "defendant" had been properly advised by the Court of the minimum and maximum ranges of **all** cases your Petitioner would not have plead guilty to Case No. CC-03-323 and CC-03-325.

Your ¹/₄ Petitioner shows to this Court that your Petitioner's plea of guilt was not made knowingly and intelligently, hence; Petitioner's plea of guilt could not be accepted by the Court.

Your Petitioner shows to this Court that he was ill-advised by his trial counsel that he had to plead guilty to (23) years because the State had forensic evidence against your petitioner and if your Petitioner was to go to trial your Petitioner would receive a much harsher sentence.

Your Petitioner, pursuant to his attorney pled guilty because his attorney did not want to go to trial and because said attorney stated that the State had forensic evidence against your Petitioner, which; your Petitioner recently found out is not true.

Your Petitioner shows to this Court that he was not informed by his attorney of the true evidence against your Petitioner and, thus; your Petitioner could not knowingly and intelligently "waive" his due process right to trial.

Your Petitioner would not have pled guilty if his counsel had properly advised your Petitioner that the State did not have any forensic evidence against your Petitioner.

Therefore, Petitioner did not have all the facts of his case and therefore Petitioner could not waive his constitutional right, pursuant to: the (6th) Amendment to the United States Constitution, for due process and further pursuant to: Alabama Constitution, 1901, §Art. I, §(6), and further pursuant to: the (14th) Amendment to the United States Constitution, for equal protection made obligatory upon the States pursuant to: the (5th) Amendment to the United States Constitution. See Teel-v-Burton, 904 F. Supp. 1294, and, further pursuant to: Lynch-v-Baxley, 386 F. Supp. 378.

ISSUE # 3:

CONVICTION OBTAINED BY USE OF A COERCED CONFESSION FROM THE DEFENDANT AND THE ALLEGED CO-DEFENDANT.

ARGUMENT

Your Petitioner shows to this Court that on the even- of your Petitioner's arrest in this instant case at bar your was highly intoxicated to the point of being twice over the legal limit of intoxication.

Because of your Petitioner's intoxication your Petitioner was in no way able to consent to waiver of any constitutional rights or interrogation.

Your Petitioner shows to this Court that his degree of intoxication was to the point that your Petitioner could not form any type of consent to knowingly waive his constitutional rights to interrogation by the police. See Code of Alabama, 1975, §13A-3-2, et. seq., and Lovette-v-State, 491 So. 2d. 1034,1035.

Your Petitioner further shows to this Court that your Petitioner's alleged co-defendant in this instant case at bar was apparently "coerced" into making a statement against your Petitioner as said co-defendant made five (5) different statements against your Petitioner and once the police were able to get the statement from the alleged co-defendant that best suited the police, said police then used said "coerced statement" to charge your Petitioner with a charge for "conspiracy to commit robbery".

Your Petitioner shows to this Court that his alleged statement to the police was "coerced" and therefore would have been inadmissible at trial not to be used against your Petitioner. See Williams-v-State, 75 So. 2d. 753, rehearing denied Ex Parte Williams, 795 So. 2d. 785 rehearing denied, certiorari denied 122 S. Ct. 226, 534 U.S. 900, 151 L. Ed. 2d. 162.

Your Petitioner further shows to this Honorable Court that the alleged co-defendant statements were also coerced a lot of inducements were offered to said co-defendant for his statements against your Petitioner, hence; said five (5) different statements made against your Petitioner by the alleged co-defendant are null and void. See Craig-v-State, 719 So. 2d. 274 rehearing denied and certiorari denied, denial of Post-Conviction Relief affirmed, 819 So. 2d. 1001.

Hence, Petitioner was coerced into making a statement as the police threatened your Petitioner that there was forensic evidence against your Petitioner when there was none. Further threatened your Petitioner that there was a statement from the alleged co-defendant that would of proved to be involuntary and inadmissible against your Petitioner.

ISSUE # 4:

ARREST AND CONVICTION OBTAINED BY USE OF EVIDENCE GAINED PURSUANT TO AN UNCONSTITUTIONAL SEARCH AND SEIZURE.

ARGUMENT:

Your Petitioner shows to this Court that he went to the alleged victim's house to pick up a "mantle" that the alleged victim's daughter said I could have.

Your Petitioner shows to this Court that "Lee Williamson" gave your Petitioner a ride to the alleged victim's house to pickup said mantle.

While your Petitioner was trying to notify the alleged victim that your Petitioner was there to pickup said "Mantle" "Lee Williamson" pulled out of the alleged victim's driveway, leaving your Petitioner without a ride home.

The police caught up with "Lee Williamson" and the police then came back to the alleged victim's house and without an arrest warrant or search warrant searched your Petitioner and at that time placed you Petitioner under arrest.

Your Petitioner further shows to this Court that at a later date the police obtained a search warrant without probable cause to search your Petitioner's place of residence.

Your Petitioner shows to this Court that he was legally at the alleged victim's residence having gained permission to go there and having done considerable work for the alleged and her daughter.

Petitioner shows to this Court that he was illegally and unconstitutionally searched at the alleged victim's residence and further shows to this Court that where a search is executed without warrant, burden falls within exception to warrant requirement.

Your Petitioner further shows to this Court that ther police did not meet these requirements in your Petitioner's case at bar, thus; violating your Petitioner's (4th) Amendment Right to the United States Constitution against unreas-

onable search and seizures. Your Petitioner further shows to this Court that Officers did not have probable cause to arrest your Petitioner, to search his person, or to seize items from from his person.

There was no evidence that the Petitioner was involved in any illegal action when the police approached your Petitioner.

Hence, your Petitioner's U.S.C.A., #(4) Right to unreasonable searches and seizures have been violated, SEE Gaskin-v-State, 565 So. 2d. 675; See also; White-v-State, 550 So. 2d. 1074; writ denied 550 So. 2d. 1081, certiorari granted 110 S. Ct. 834; 493 U.S. 1042; 107 L. Ed. 2d. 301; on remand 571 So. 2d. 400.

Your Petitioner further shows to this Court that Probable Cause for warrantless search **cannot** be founded upon mere suspicion as in your Petitioner's instant case at bar, hence; U.S.C.A., #(4) Right against unreasonable search and seizure has again been violated by the Respondents and/or their agents, See Ex Parte Tucker, 667 So. 2d. 1339, rehearing denied on remand, Tucker-v-State, 667 So. 2d. 1353, certiorari denied Alabama-v-Tucker, 116 S. Ct. 382; 516 U.S. 944, 133 L. Ed. 2d. 305.

Therefore, any evidence, (physical or constructive) that was taken from your Petitioner is "tainted fruit" and has to be suppressed and **never** used against your Petitioner now or in the future.

ISSUE # 5:

CONVICTION OBTAINED BY USE OF EVIDENCE OBTAINED PURSUANT TO AN UNLAWFUL ARREST.

ARGUMENT:

Your Petitioner shows to this Court that he was illegally arrested and that an extraction of a statement allegedly gained

arrest" till time of alleged confession. See Taylor-v-Alabama, 102 S. Ct. 2664, 457 U.S. 687, 73 L. Ed. 2d. 314, hence; your petitioner's alleged confession was gained illegally and unconstitutionally by a violation of the (4th) Amendment to the United States Constitution, and a further violation of the (5th) Amendment to the United States Constitution, privilege against self-incrimination.

ISSUE # 7:

CONVICTION OBTAINED BY THE UNCONSTITUTIONAL
FAILURE OF THE PROSECUTION TO DISCLOSE TO THE
DEFENDANT EVIDENCE FAVORABLE TO THE DEFENDANT.

ARGUMENT:

Your Petitioner shows to this Court that your Petitioner is entitled to any and **all** "exculpatory evidence" that the state/prosecution/respondents may have in their possession.

Your Petitioner shows to this Court that your Petitioner's attorney, pursuant to: Alabama Rules of Criminal Procedure, Rule # 16, et. seq., is suppose to file a "Motion for Discovery" to the Respondents and that said Respondents have a duty to provide **all** evidence to your Petitioner, exculpatory or otherwise. See Brady-v-Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.ed. 2d. 215.

Furthermore, in "BRADY", "the Court held due process was violated where, after your Petitioner's request, the state failed to reveal evidence that was material to your petitioner's guilt or punishment".

The Court in "Brady" reasoned that if the state were allowed to withhold potentially exculpatory evidence which had been demanded by your Petitioner through "Discovery" the state would be able to shape the very nature of the trial, as in your Petitioner's case at bar, where a trial is already weighed against your Petitioner.

Your Petitioner further shows to this Court that such orche-

stration of a criminal trial does not comport with the acceptable standards of justice.

Also, "Brady" requires the state to disclose any information it has which is favorable to your Petitioner, again; which the prosecution failed to do for your Petitioner.

Requiring the disclosure of the evidence, or lack of evidence as in your Petitioner's case at bar, in the state's possession which is material to the preparation of your Petitioner's case is an extension of due process and equal protection, hence; the Respondents and your Petitioner's attorney violated your Petitioner's Sixth (6th) Amendment Right to the United States Constitution, Right of Due Process, and, fourteenth (14th) Amendment Right to the United States Constitution, Right to Equal Protection made obligatory upon the States pursuant to: the Fifth (5th) Amendment to the United States Constitution. See United States-v-Agurs, 427 U.S. 97, 96 S.Ct. 2392, 4 L.Ed. 2d. 342, and, Miller-v-Pate, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed. 2d. 690, see also; Moore-v-Illinois, 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed. 2d. 706.

Finally, pursuant to: Alabama Rules of Criminal Procedure, Rule # 16.1(f): "Nothing in this Rule [Rule 16.1, et. seq.], shall be construed to limit the discovery of exculpatory evidence to which the Petitioner is entitled under constitutional provisions or other provisions of law".

Your Petitioner shows to this Court that the State failed to show that there was "no forensic or physical evidence" against your Petitioner and instead chose to mislead your Petitioner that there was forensic and physical evidence against your Petitioner to get your Petitioner to plead guilty.

ISSUE # 8:

PETITIONER WAS CONVICTED PURSUANT TO INEFFECTIVE ASSISTANCE OF COUNSEL.

ARGUMENT:

Your Petitioner shows to this Court that pursuant to: the Fifth (5th); Sixth (6th); and, the Fourteenth (14th) Amendments to the United States Constitution, Petitioner shall have

effective assistance of counsel, whether; counsel is appointed obtained, the level of representation shall be the same, but, in your Petitioner's instant case at bar your Petitioner's was so ineffective that it prejudiced your Petitioner from receiving "effective assistance of counsel.

Your Petitioner shows to this Court that your Petitioner's Attorney owed your Petitioner a "duty of loyalty, a duty to advocate your Petitioner's defense, a duty to consult with your Petitioner on important decisions, a duty to keep your Petitioner informed of important develops in the course of your Petitioner's prosecution, and a duty to bear such skill and knowledge as which will render the trial a reliable testing procees". See Strickland-v-Washington, 466 U.S. 668, 80 L.Ed. 674, 104 S.Ct. 2052, and, United States-v-Cronic, 466 U.S. 648, 80 L.Ed. 2d. 657, 104 S.Ct. 2039, said counsel did not provide **any** of the foregoing in your Petitioner's instant case at bar.

The adversarial process protected by the Sixth (6th) Amendment requires that the accused have counsel acting in the role of an advocate, and the **right** to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. See McMann-v-Richardson, 397 U.S. 759, 771 n14 25 L.Ed. 2d. 763, 90 S.Ct. 1441.

The Sixth (6th) Amendment requires not merely the provision of counsel to the accused in a criminal prosecution, but, assistance which is to be his defense, and thus, the core core purpose of the counsel guaranty is to assure counsel assistance at trial when the accused is confronted with the intricacies of the law, and if no actual assistance for the accused's defense is provided, as in your Petitioner's instant case, then the constitutional guaranty has been violated, as in your Petitioner's instant case at bar. See United States-v-Cronic, 466 U.S. 648, 80 L.Ed. 2d. 657-659, 104 S.Ct. 2041.

Your Petitioner shows to this Court that the Sixth Amendment to the United States Constitution provides, in pertinent

part, the following, to wit;

"In all criminal prosecutions, the accused shall enjoy the right...to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Hence, your Petitioner did not have the effective assistance of counsel as guaranteed by the Sixth (6th) Amendment to the United States Constitution as none of the foregoing was provided for your Petitioner. See United States-v-Ash, 413 U.S. 300, 30, 37 L.Ed. 2d. 619, 93 S.Ct. 2568.

Your Petitioner shows to this Court that your Petitioner's attorney did ^{Not} provide the following:

- a). Contact witnesses who wrote to your Petitioner's attorney to testify in your Petitioner's behalf, and;
- b). Did no investigatory work in your Petitioner's, case, and;
- c). File Motion to Recuse the Judge[s], both in District Court and the Circuit Court because said Judge[s] were prejudicial against your Petitioner, and;
- d). If a "motion for Discovery" was filed your Petitioner's never did ^{See} said results from said Motion for Discovery, nor, did the attorney go over any results of said "Discovery" with your Petitioner before trial, and;
- e). Petitioner's Attorney did ^{Not} file any pre-trial "motions" prior to trial and/or at your Petitioner's Plea in example, but not limited to:
 - 1). Motion to Suppress Petitioner's illegally gained statement, and;
 - 2). Motion to Quash or Demurr Petitioner's indictment as it is fatal and does not track the language of the statute[s], and;
 - 3). Acted in Concert with the Prosecution to gain an illegal and unconstitutional conviction by providing false information to your Petitioner that the Prosecution had forensic evidence against your Petitioner, when said Prosecution did not have said

forensic evidence in their possession, but, the prosecution lead your Petitioner into believing that they did have said evidence and your Petitioner's counsel worked in concert with said Prosecution to illicit a guilty plea from your Petitioner, and;

- f). Did not investigate the alleged co-defendant's (5) different statement against your Petitioner, or, file a "Motion for Suppression" against said statements from the alleged co-defendant's statements, and;
- g). Did not investigate to see if the prosecution was in possession of any exculpatory statements, documents, or, evidence that would establish your Petitioner's innocence, and;
- h). Failed to discuss any strategy concerning your Petitioner's case, and;
- i). Contact your Petitioner to discuss and prepare for his defense for a trial, and;
- j). Did not file a "Motion to Suppress Evidence" that was illegally and unconstitutionally gained from Petitioner pursuant to a "warrantless" arrest, and;
- k). Informed his attorney to file a "Motion to Change Venue" as the alleged crime took place in a small town who knew the alleged victim, and;
- l). Ask his attorney to file a "Motion to Withdraw as my attorney, but said attorney failed to do so, and;
- m). Asked said attorney to file several other "Motions" but, all said attorney's response to your Petitioner was: "why, you're going to lose anyway", and;
- n). Waited until my case was over to fight my public intoxication arrest which was gained at the same time as this instant case at bar and by said attorney's failure to handle said case a bench warrant was issued for my arrest, and;
- o). Failed to advise me of my right to appeal, and;

p). Petitioner^{not} did authorize counsel to waive arraignment.

Hence, your Petitioner shows to this Court that Petitioner's Attorney was ineffective and that his conviction in this instant case at bar is due to be vacated. See Terry-v-State, 601 So. 2d. 161, certiorari denied, Weaver-v-State, 401 So. 2d. 344; Gore-v-State, 227 So. 2d. 432, 45 Ala. App. 146, certiorari denied 227 So. 2d. 435, 284 Ala. 729, certiorari denied 90 S.Ct. 1002, 397 U.S. 966, 25 L.Ed. 2d. 258, Thomas-v-Harr-elson, 42 F. 2d. 1530, and; Jones-v-White, 992 F.2d. 1548, rehearing denied Garrette-v-Jones, 3 F.3d. 444, Mardis-v-Jones, 3 F.3d. 444, certiorari denied 114 S.Ct. 448, 126 L.Ed. 2d. 381, certiorari denied 114 S.Ct. 727, 126 L.Ed. 2d. 691.

ISSUE # 9:

THE COURT WAS WITHOUT JURISDICTION TO RENDER
THE JUDGEMENT OR TO IMPOSE THE SENTENCE.

ARGUMENT:

Your Petitioner shows to this Court that your Petitioner's Indictment is "fatal". In said indictment it states:

"Robert Wayne Clements, alias Robert Clements, whose true is otherwise unknown to the Grand Jury, did agree with Michael Williams, alias, to commit the crime of **Robbery First Degree** (Section 13A-8-41 of the Code of Alabama) with the intent that conduct constituting said offense be performed and that Robert Wayne Clements did go to the residence of Julia M. Tatum, while said Robert Wayne Clements was armed with a shotgun, and in possession of work gloves, ski mask, and/or cord in furtherance of said crime, in violation of Section 13A-4-3 of the Code of Alabama".

Your Petitioner shows to this Court that said "Indictment" is fatal as in nowhere in the Indictment does it so state: "**knowingly**" in said Indictment.

The Indictment is **defective**...If it fails to charge the that the defendant "**knowingly**" committed the act for which he is criminally indicted.

The fact that said indictment refers to its statutory source cannot save the indictment as in your Petitioner's in-

to allege this element. Your Petitioner further argues that the failure to allege this essential element renders the indictment void and unable to support a judgement of conviction as in your Petitioner's instant case at bar.

Your Petitioner shows to this Court that he pled guilty and that by pleading guilty your Petitioner would waive any irregularities in an indictment by appearing and pleading in a trial court, because his plea to the merits is held as an admission that the indictment is valid.

However, "[t]he only exception to this exception to this is when an indictment fails to include an essential element of the offense which leaves the accused unaware of the nature and cause of the charge against him, as in your Petitioner's instant case at bar". See Canada-v-State, 421 So. 2d. 145.

"This Court is bound to take notice of defects in an indictment which render it void even in the absence of an objection". See Felder-v-State, 512 So. 2d. 817, 818, and; Barbee-v-State, 417 So. 2d. 612, see also; Alabama Rules of Criminal Procedure Temporary), Rule # 16.2 (a) (d) which provide that the failure of the charge to state an offense may be raised at any time.

Hence, your Petitioner shows to this Court that your Petitioner's instant case at bar fits the exception to the preservation rule because the omission of the allegation of "knowledge in your Petitioner's indictment in this instant case at bar is the type of defect that renders the indictment void. See Walker-v-State, 56 So. 2d. 672.

ISSUE (b):

Your Petitioner shows to this Court that on or about 08-09-03, your Petitioner through his attorney notified the court of his intent to plead guilty.

Your Petitioner further shows to this Court that after expiration of only (2) days the trial court accepted your Petitioner's guilty plea for "Conspiracy to Commit Robbery and Possession of a Short Barreled Shotgun".

Your Petitioner shows to this Court that the Court was without jurisdiction to accept your Petitioner's Guilty Plea as said Court did not wait the prescribed (3) days to take your Petitioner's guilty plea from the date that your Petitioner first notified the Court of his intent on pleading guilty.

Petitioner shows to this Court that he notified the Court on 08-09-03 of his intent to plead guilty and this Court accepted Petitioner's guilty plea on 08-11-03.

Petitioner shows to this Court that your Petitioner's Judgement is void because the trial court failed to observe the requirements of Code of Alabama, 1975, §15-15-22 since your Petitioner's Plea was entered within (3) days after the notice to the court of his intention to plead guilty. See State-v-Baker, 268 Ala. 410, 108 So. 2d. 361.

Failure to comply with mandatory requirements of Code of Alabama, 1975, §15-15-22 void any judgement of §15-15-20, et. seq..

Hence, your Petitioner's judgement is void in these instant cases at bar. See Wesley-v-State, 448 So. 2d. 468, and; and Barbee-v-State, 417 So. 2d. 611, 612 (quoting State-v-John, 142 Ala. 61, 28 So. 755.

ISSUE (c):

Your Petitioner shows to this Court that your Petitioner was allegedly arrested and indicted for the alleged offense of "Conspiracy to Commit Robbery". But, your Petitioner shows this Court that his indictment is fatal and void as it does properly charge your Petitioner with "Conspiracy to Commit Robbery in the First Degree", but, instead charges your Petitioner with (2) separate offenses, "Robbery in the First Degree and does not mention anything about "Conspiracy".

Indictment so states in pertinent part, the following:

"The Grand Jury of said County charge that before the finding of this indictment CC-03-323 Robert Wayne Cle-

C ments, alias Robert Clements, whose true christian name is otherwise unknown to the grand jury, did agree with Michael Lee Williams, alias, to commit the crime of "Robbery in the First Degree" (Section 13A-8-1 of the Code of Alabama) with the intent constituting said offense be performed and that Robert Wayne Clements did go to the residence of Julia M. Tatum, while said Robert Wayne Clements was armed with a shotgun, and was in possession of work gloves, ski mask and/or cord in furtherance of said crime, in violation of Section §13A-4-3 of the Code of Alabama."

Your Petitioner shows to this Court that nowhere does it state that your Petitioner is charged with "Conspiracy to Commit Robbery, but, instead charges your Petitioner with "Robbery in the First Degree".

Your Petitioner shows to this Court that said indictment was defective and failed to adequately notify and charge your Petitioner with the alleged offense of "Conspiracy to Commit Robbery in the First Degree, and instead charges your Petitioner with Robbery in the First Degree".

Your Petitioner shows to this Court that when an indictment fails to include essential element of offense, as in "Conspiracy" as in your Petitioner's instant case at bar, this left your Petitioner unaware of the charge against him. See Alabama Rules of Criminal Procedure, (Temporary), Rule # 16.2(a) (d).

Your Petitioner further shows to this Court that the indictment under which your Petitioner was found guilty by this Court does not aver all the elements of "Conspiracy" and, for that reason, does not charge a crime that would have conferred jurisdiction upon the trial court.

Your Petitioner further shows to this Honorable Court the fact that the indictment refers to its statutory source cannot save it from being fatally deficient as in your Petitioner's instant case at bar.

The rule is that the indictment **must** contain all the essentials to constitute the offense, explicitly charged, and that they must not be left to inference, as in your Petitioner's instant case at bar. See State-v-Seay, 3 Stew, 123, 131; Pate-v-State, 45 Ala. App. 164, 166 227 So. 2d. 583, and; see also; Woodham-v-State, 28 Ala. App. 62, 178 So. 464.

ISSUE # 10:

NEWLY DISCOVERED MATERIAL FACTS EXIST WHICH REQUIRE THAT THE CONVICTION OR SENTENCE BE VACATED BY THE COURT.

ARGUMENT:

Your Petitioner shows to this Court that his attorney did not go over any of the materials produced on Discovery.

It was not until 2004 that your Appellant was finally able to get most of the materials that were produced on discovery. Petitioner also shows to this Court that your Petitioner does not have all of the documents and evidence that the State and your Petitioner's Attorney has in their possession.

In finally being able to read and research your Petitioner's case your Petitioner has come to learn for the first time of all the discrepancies concerning your Petitioner's case, and, if your Petitioner had known of all the errors committed by Respondents and/or their agents your Petitioner would never have pled guilty.

There are several things that your Petitioner has noted from his "discovery" that were in error, to include but not limited to the following:

- 1). Ineffective Assistance of Counsel, and;
- 2). The Court was without jurisdiction to find me guilty or to sentence me, and;
- 3). That my statements could have been easily suppressed, and;
- 4). That the alleged co-defendant committed perjury more than (5) times, and;
- 5). That there was no evidence, forensic or otherwise against me, etc..

Your Petitioner shows to this Court that the "newly discovered evidence" are not cumulative to one another See Harris-v-State, 778 So. 2d. 256 and also, A.R.Cr.P., Rule #32.1 (e).

Your Petitioner further shows to this Court that the "newly discovered evidence" was **not** known before your Petitioner's trial or guilty plea. See Jones-v-State, 753 So. 2d. 1174.

ISSUE # 11:

YOUR PETITIONER FAILED TO APPEAL WITHIN THE
PRESCRIBED TIME AND THAT FAILURE WAS WITHOUT
FAULT UPON YOUR PETITIONER'S PART.

ARGUMENT:

Your Petitioner shows to this Court that after your Petitioner was convicted by this Court and sentenced by this Court that this Court and your Petitioner's Trial Attorney failed to advise your Petitioner that your Petitioner had a right to appeal his conviction and sentence.

Your Petitioner shows to this Court that the record is void of any statement by this Court that this Court advised your Petitioner of his right to appeal his conviction and sentence.

Furthermore, your Petitioner shows to this Court that there is nothing to support trial counsel had advised your Petitioner of his right to appeal.

Your Petitioner shows to this Court that pursuant to: due process clause of the (6th) Amendment to the United States Constitution, and, Alabama Constitution, 1901, Art. I, §(6), your Petitioner further shows to this Court that pursuant to: the (14th) Amendment to the United States Constitution your your Petitioner further has a due process and equal protection right made obligatory upon the States pursuant to: the (5th) Amendment to the United States Constitution, that your has a right to be advised of his right to appeal, this was not done in your Petitioner's case at bar.

Your Petitioner further shows to this Court that pursuant to: Alabama Rules of Criminal Procedure, Rule #26.9 the Court shall inform the "defendant" of his right to appeal. SEE Waddle-v-State, 748 So. 2d. 368, 369, and; Burton-v-State, 728 So. 2d. 1142. Your Petitioner further shows to this Court that ne-the Judge or your Petitioner's attorney advised your Petitioner your Petitioner of his right to appeal your Petitioner's conviction and sentence.

ISSUE # 12:

TRIAL JUDGE WAS PREJUDICED AGAINST YOUR PETITIONER AND SHOULD HAVE RECUSED HIMSELF AND/OR TRIAL COUNSEL SHOULD HAVE FILED MOTION TO RECUSE SAID TRIAL AND DISTRICT JUDGES.

ARGUMENT:

Your Petitioner shows to this Court that when your Petitioner was initially arrested for the herein referenced offenses your Petitioner's bond was originally set at a figure that your Petitioner could make bail on.

Your Petitioner shows to this Court that at a later date the Lee County District Court, The Honorable Russell K. Bush raised said bail to almost (\$2,000,000).

Your Petitioner further shows to this Court that your Petitioner's Trial Circuit Court Judge acted in concert with Judge Bush to maintain and unlawful and unconstitutional bail of (\$2,000,000).

Your Petitioner further shows to this Court that said oppressive bail violated the (8th) Amendment to the United States Constitution.

Your Petitioner shows to this Court that bail in the amount of almost (\$2,000,000) is excessive. Petitioner shows in Ex Parte Thomas, 815 So. 2d. "Thomas" was charged with (3) murders and his bail was (\$1,000,000) and the decision in "Thomas" stated that said (\$1,000,000) bail was "excessive".

Furthermore, your Petitioner's (\$2,000,000) bail exceeded the prescribed recommended bail schedule in which your Petitioner's initial bail was properly set pursuant to bail schedule and Alabama Rules of Criminal Procedure, Rule #7.2.

And, for the District Court Judge to raise your Petitioner's bail to (\$2,000,000) and for your Petitioner's trial to maintain said excessive bail violated your Petitioner's constitutional rights prescribed in Ex Parte Thomas, 815 So. 2d. 592.

Your Petitioner shows to this Court that the District Court Judge is good friends with the alleged victim's family and because of said friendship said District Court Judge improperly raised your Petitioner's bail to almost (\$2,000,000) from your Petitioner's initial bail of (\$ 5,000) without a and did so arbitrarily and capriciously.

Your Petitioner's bail does not conform to the bail standard as set forth in Alabama Rules of Criminal Procedure, Rule #7.2 (b), which your Petitioner's bail should have not been more than (\$3,000 to 30,000).

Your Petitioner further shows to this Court that said District Court failed to adhere to Alabama Rules of Criminal Procedure, Rule # 7.2, et. seq., and hold a hearing to properly access your Petitioner's bail.

Your Petitioner further shows to this Court that the Circuit Court acted in accordance to stay your Petitioner's bail at almost (\$2,000,000) without any type of a hearing, which violated not only your Petitioner's due process rights pursuant to the (6th) Amendment to the United States Constitution, and, Alabama Constitution, 1901, Art. I, §(6), and further pursuant to the (8th) Amendment to the United States Constitution, against unreasonable bail as in your Petitioner's instant case at bar.

Your Petitioner shows to this Court that said Judge was not impartial to your Petitioner's case throughout your Petitioner's case and that said Judge's impartiality to your Petitioner would easily have been questioned if another person knew all of the circumstances in your instant case at bar and that said impartiality was a complete violation of Canon of Judicial Ethics, Canon #(3), subds. C, C(1), See also; Ex Parte Duncan, 638 So. 2d. 1332.

Your Petitioner further shows to this Court that said should have been disqualified as said Judge(s) adverse action against your Petitioner affected your Petitioner's individual individual rights, and said Judge(s) had a probable and natural through their actions against your Petitioner to create bias against your Petitioner. See Williams-v-Faucett, 579 So. 2d. 572. Hence, said Judge(s) should have recused themselves.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE PREMISES SHOWN: YOUR PETITIONER HEREBY PRAYS
FOR THE FOLLOWING:

(1).

Your Petitioner prays that this Honorable Court hereby grants this instant "Rule # 32 Petition" and immediately vacate your Petitioner's Conviction and Sentence in this instant case at bar.

(2).

In the alternative, your Petitioner prays for an "Evidentiary Hearing" if this Court does not immediately grants your Petitioner's Rule #32 Petition.

(3).

Petitioner also prays that this Court appoint Counsel to represent your Petitioner on this instant case at bar.

(4).

Your Petitioner prays that this Court make a transcript of all proceedings concerning this instant case at bar if this Court does not Court does not grant your Petitioner's Rule #32 Petition so that there shall be an accurate for eventual appeal.

(5).

Your Petitioner prays that your Petitioner will be transported to **all** phases and hearings concerning your Petitioner's Rule #32 Petition.

(6).

Your Petitioner finally prays for any further relief that this Court deems just, proper, and, necessary.

Executed this the 8 day of July, 2004.

RESPECTFULLY SUBMITTED,

X Robert W. Clements

ROBERT W. CLEMENTS,
PETITIONER, PRO-SE

C E R T I F I C A T E O F S E R V I C E

I hereby certify that I have served upon the Respondent a copy of the foregoing by placing same in the United States Mail Box located at Easterling Correctional Facility, postage prepaid and addressed correctly.

Executed this the 8 day of June, 2004.



ROBERT CLEMENTS,
PETITIONER, PRO-SE

ADDRESS OF PETITIONER:

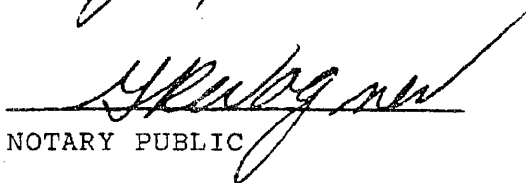
ROBERT CLEMENTS, PRO-SE
ECF * #145598 * DORM - 9/A-24
200 - WALLACE DRIVE
CLIO, ALABAMA 36017-2615

- N O T A R Y S T A T E M E N T -

STATE OF ALABAMA]
COUNTY OF BARBOUR]

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 8th DAY OF

July, 2004.


NOTARY PUBLIC

my commission expires March 10, 2007

MY COMMISSION EXPIRES